

REMARKS:

The Examiner has rejected Claim 34 and dependent Claims 33, 35, 36 and 42 to 50, based on the statement in Claim 34 that "evaluation data in said program is predetermined". The Applicant has amended Claim 34, but has placed the word "predetermined" in subparagraph (a) of Claim 32. The Examiner states that Claim 32 provides that data is input and that Claim 34 appears to contradict the notion of inputted data by stating that evaluation data is predetermined. It is respectfully submitted that Claim 34, prior to amendment, was not inconsistent with Claim 32, as Claim 32 provides for a range of inputs for each of the risk factors, but does not refer to those inputs expressly as "data". In subparagraph (a) of Claim 32, a reference is made to the program containing evaluation data and in the current amendment, "predetermined" evaluation data. It is readily apparent from the specification as originally filed that the program contains predetermined evaluation data and, in addition, a range of predetermined risk values for each of a plurality of potential risk factors. The system then allows inputs of particular risk factors by a user and, when the user inputs those risk factors, the system automatically determines a net value for all of the inputs for the risk factors, and automatically produces an assessment of risk for the industrial equipment, based on the inputs for the risk factors made by the user, but also based on the evaluation data for the program.

When the same inputs are made, the program of the present invention automatically produces the same net value and the same assessment of risk. When different inputs are made, the net value and the assessment of risk will vary as the inputs vary. The user of the program has no control over the predetermined evaluation data, or the range of predetermined risk values which are already set up in the program. In other words, the user cannot manipulate the result by changing the evaluation data or changing the predetermined risk values for each of the plurality of potential risk factors. The only variable that the user can make is to vary the inputs with respect

to the risk factors. Once a given set of inputs have been made, the resulting determination of net value and assessment of risk is automatic. The risk evaluation is determined based on the information inputted relating to the plurality of risk factors and also on the predetermined evaluation data that is already in the program.

It is respectfully submitted that the Section 112 rejection should therefore be withdrawn.

The Examiner has rejected Claims 1-4, 8, 32 to 34, as being unpatentable over Packwood and Masch. Masch has been cited previously. Packwood describes a business management tool and a new and useful method for identifying, evaluating, and responding to risks associated with a business operation, such as in a financial institution. However, in Packwood, the risk factors of a business operation do not relate to industrial equipment but, as referred to in column 5, beginning at line 45, refer to late payments received by the business, differences between interest rates on savings and interest rates on loans, rates of turnover of employees, days of product in inventory, accounts receivable aging, or the number of loans in default. In other words, the risk factors in Packwood relate to financial issues of the business. A risk assessment program for industrial equipment that can be applied to any industrial equipment is much more complex than a risk assessment method as a management tool for evaluating risks associated with the financial aspects of a business, and Packwood does not render the Claims of the present Application, as amended, unpatentable. Specifically, Packwood does not have predetermined evaluation data or predetermined risk values for each of a plurality of potential risk factors. With the present invention, the program contains predetermined evaluation data and a range of predetermined risk values for each of a plurality of risk factors, neither of which can be changed or varied by the user. For any and all of the above reasons, it is respectfully submitted that the above rejection of the Claims based upon paragraph 7 of the Office Action should be withdrawn.

In column 5, beginning at line 56, Packwood states that for each risk factor selected, at least two ranges of risk level values must be set. One range of risk level values includes acceptable measured values for the risk factor, while the other range includes measured values which are unacceptable. The determination of what values are acceptable and which are unacceptable is typically to be made by the management of the business. In column 6, beginning at line 23, Packwood states that once the risk factors have been selected and risk level value ranges set, a risk tolerance must be assigned. A low tolerance factor is said to be one which can bring about the demise of the business on its own if it is at an unacceptable level and not corrected. The actual risk level values are then compared to the risk level value ranges, and this can be done using any known method for comparing data values including Microsoft's Excel.

In column 7, beginning at line 32, Packwood states that after the spreadsheet is programmed, the actual risk level values are entered into the spreadsheet either manually, or by extraction from a database. It is respectfully submitted that Packwood, like Masch, is patentably distinct from the present invention because, with the present invention, the program contains predetermined evaluation data and predetermined risk values which cannot be changed by the user. With Packwood, the user actually sets the management of the business to select risk factors and identify the parameters for each risk factor, but the risk factors and the parameters or ranges of risk level values may be periodically reviewed by management and adjusted.

In column 5, beginning at line 60, Packwood states that the determination of what values are acceptable and which are unacceptable is typically to be made by management of the business. The user sets the value ranges in Packwood and in column 6, beginning at line 23, a tolerance is assigned to each risk factor after the risk factor has been selected and the risk value level ranges

have been set. The risk tolerance reflects the management's willingness to permit the factor to be non-compliant.

The Applicant repeats the remarks made previously with respect to Masch in the Response dated November 8, 2007. Masch provides that if the outcome level of at least one of the risk-related activities falls outside the boundary limits for that activity, Masch simply provides that the boundary limit can then be changed to ensure that the outcome level does not fall out of the expanded or revised boundary limits for the activity. It is not obvious from the combination of Packwood and Masch to create a risk assessment program or method of risk assessment for industrial equipment as described and claimed in the present Application, because the present Application does not allow the user to change boundary limits, and does not allow the user to change tolerances or to input evaluation data or risk values for each of the plurality of potential risk factors. The user of the present invention is only allowed to input selections for each possible risk factor, having a range from minor to major. Once that information has been inputted, the system automatically determines the result of the inputs. With each of Packwood and Masch, the user can vary the tolerances or the boundary limits respectively, and together Packwood and Masch allow both to be varied by the user. With respect to assessing risk of industrial equipment, because of the safety factor involved, it is extremely important that the user not be able to manipulate the method or system to produce a desired result, as can be done with both Packwood and Masch. It is therefore respectfully submitted that the rejection based on Packwood and Masch should be withdrawn. Similarly, it is respectfully submitted that a risk assessment of a business from a financial standpoint is patentably distinct from a risk assessment of industrial equipment, and for that reason alone, the rejection should be withdrawn. The same position given above with respect to Claim 1 also applies with respect to Claim 2 and Claim 32 and any of the Claims where Packwood or Masch and Packwood together, are relied upon by the

Examiner. This includes Claims 3, 4, 8, 33, 34, as well as the rejections referred to in paragraph 8 of the Office Action.

In paragraph 8 of the Office Action, the Examiner rejects Claims 5, 6, 10, 12 to 21, 23 to 31, 37 to 40, and 42 to 50 as being unpatentable over Packwood and Masch and further in view of Bladen. The Applicant repeats the remarks made with respect to Bladen in the previous Response of November 8, 2007 as well as the previous remarks made with respect to Masch in the same Response.

The Bladen Application does not provide a computer program at all that conducts a risk assessment, but only provides a checklist and software that allows forms to be filled in by a consultant who is conducting a risk assessment manually. It is the local consultant who makes the decision as to whether or not a site complies or does not comply, and the consultant then enters that information into the software program. Further, it is respectfully submitted that it is not obvious to combine the teachings of Packwood, which describes a process for evaluating financial aspects of a business, with Masch that provides for boundary changes with the word processing program of Bladen. Masch teaches the changing of the boundary limits if the result achieved is outside the boundary limits to make sure the next result is within the broadened boundary limits. Packwood requires the user to input what values are acceptable for the risk factor, and what values are not acceptable. Packwood also requires the user to determine what the risk tolerance should be after the risk factors have been selected by the user and the risk level value ranges have been set by the user. Both Packwood and Masch are not acceptable methods or systems for risk assessment with respect to industrial equipment. The purpose of risk assessments with respect to industrial equipment is to evaluate the risk of injury or accident, and to provide an objective method and system for evaluating the risk. Packwood and Masch do not

provide any objective assessment as the user is directed in both Packwood and Masch to input criteria to change the result based on the same input information with respect to risk factors. Bladen adds nothing to Packwood and Masch, as Bladen is merely a word processing program through which manual determinations of risk by, or on behalf of, a user can be stored in the word processing program. It is therefore respectfully submitted that the rejections of the Claims in paragraph 8 of the Office Action be withdrawn.

In paragraph 9 of the Office Action, Claim 9 is rejected as being unpatentable over Bladen and further in view of Packwood and Masch. Claim 9 is dependent upon Claim 5, which is indirectly dependent upon Claim 1. Since Claims 1 to 4 and 8 are allowable, Claim 9 is also allowable. Further, both Packwood and Masch suffer from the limitations discussed above and would not be suitable in a method of risk assessment or risk assessment system relating to industrial equipment. It is therefore respectfully submitted that the rejection of Claim 9 should be withdrawn.

The Examiner has rejected Claim 7 as being unpatentable over Bladen and further in view of Herbst on the basis that Herbst discloses the step of establishing the evaluation data based on the equation $A+B=C$ for each risk factor, and a reference is made to column 2, line 5 to 50 and to Figure 4 of Herbst, as well as to column 9, line 21 to 38. It is respectfully submitted that neither of the references to the Herbst Patent disclose the equation $A+B=C$, for A is the capability of the industrial equipment, B is the ability of the user, and C is the result. The reference to column 2, lines 5 to 50 discloses no equation whatsoever. The reference to column 9, lines 21 to 38 also do not refer to any equation whatsoever. Column 9, lines 0 to 20 describes Figure 4 and refers to components B, A, C, and D where the letters refer to certain components that are out of service. Further, Bladen, as indicated above, is a word processing software program that does not conduct

any risk evaluation but relies upon a manual risk assessment and the inputting of information from the manual assessment into the Bladen word processing software. It is therefore respectfully submitted that the rejection based on paragraph 10 of the Office Action should be withdrawn.

The Examiner has rejected Claim 22 as being unpatentable over Packwood and Masch, and further in view of Taylor. It is respectfully submitted that the combination of Packwood and Masch does not render the Claims of the present Application unpatentable and since Claims 1, 8 or 2 are patentable, and Claim 22 is dependent on those Claims, Claim 22 is also patentable. Therefore, it would not have been obvious to combine the teachings of Taylor and the device of Packwood and Masch, and even if Taylor was combined with Packwood and Masch, Claim 22 would not be rendered unpatentable and the rejection should be withdrawn.

The Examiner has rejected Claim 35 as being unpatentable over Packwood in view of Herbst. For the same reasons given with respect to Claim 7 above, it is respectfully submitted that the rejection of Claim 35 be withdrawn.

The Examiner has rejected Claim 36 as being unpatentable over Herbst and further in view of Packwood where reference is made to the Abstract of Packwood. The Abstract of Packwood refers to a report identifying unacceptable valued risk factors, but Claim 36 refers to the input information being in a report for the various risk factors that were inputted in order to obtain the risk assessment and that is not referred to in Packwood, or in the combination of Herbst and Packwood. It is respectfully submitted that the rejection be withdrawn. In any event, since the Claims upon which Claim 36 are dependent are patentable, Claim 36 is also patentable.

The Examiner has rejected Claims 11 and 41 as being unpatentable over Bladen and further in view of Bly. The Applicant repeats the statements made with respect to Bly in the previous Response but, in any event, Claims 11 and 41 are patentable as they are dependent upon Claims that are patentable. It is therefore respectfully submitted that the rejection be withdrawn.

Further, with respect to all of the rejections made by the Examiner, it is respectfully submitted that the Examiner is applying a higher standard than that set out in *K.S.R. v. Teleflex*. In the *K.S.R.* case, all of the features of the invention that was held to be obvious by the U.S. Supreme Court were previously known. With respect to the present invention, the Examiner has not produced prior art that discloses the invention in the Claims, as amended by the Applicant. Neither Packwood nor Masch, whether considered separately or together, render the present invention unpatentable, as both Packwood and Masch permit and require the user to change the result by changing the tolerances and/or changing the boundary limits or changing what values are acceptable and what values are unacceptable. These programs are not suitable for conducting a risk assessment for industrial equipment. In addition, adding Bladen or Bly or Herbst to the teachings of Packwood and Masch, do not render the Claims of the present Application unpatentable. The Applicant requests that the Examiner reconsider the position taken and withdraw the rejections. The Applicant has created a patentable invention that is useful, important to the industry, and well received by the industry. It is respectfully submitted that the Applicant should not be deprived of a patent by broad interpretations of the prior art that go beyond the teachings of that prior art.

It is therefore respectfully submitted that the application is in condition for allowance.

Yours very truly,

A handwritten signature in dark ink, appearing to be 'Daryl W. Schnurr', written over the printed name.

Daryl W. Schnurr

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